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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,763	10/16/2000	Daniel D. Rockey	245-55928	4232

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EXAMINER

SWARTZ, RODNEY P

ART UNIT PAPER NUMBER

1645

DATE MAILED: 04/09/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/673,763

Applicant(s)

ROCKEY ET AL.

Examiner

Rodney P. Swartz, Ph.D.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21 and 23-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21, 23-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

1. Applicants' Response to Office Action, received 28 January 2003, paper #10, is acknowledged. Claims 5-12, 19, 20, and 22 have been canceled. Claims 21 and 26 have been amended. New claims 31-47 have been added.
2. Claims 21, and 23-47 are pending and under consideration.

### **Rejections Moot/Withdrawn**

3. The rejection of claims 5-12, 19, 20, and 22 under 35 U.S.C. 112, first paragraph, written description, is moot in light of the cancellation of the claims.
4. The rejection of claims 21 and 23-30 under 35 U.S.C. 112, first paragraph, written description, is withdrawn in light of applicants' argument and claim amendments.
5. The rejection of claims 21 and 27 under 35 U.S.C. 102(b) as being anticipated by Zhu et al (WO9511309, 27 April 1995) is withdrawn in light of applicants' argument and claim amendments.

### **Claim Rejections - 35 USC § 102**

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 21, 23-29, 31, 34, 36, 37, 39, 40, 42, 43, 45, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Rockey et al (*Molecular Microbiology*, 15(4):617-626, 1995).

Claims 21, 23-25, 36, 39, 42, and 45 are drawn to a composition comprising at least one purified peptide comprising  $\geq 10$  contiguous amino acids of an amino acid sequence as set forth in SEQ ID NO:8.

Rockey et al teach the claimed composition which comprises the entire IncA, SEQ ID NO:8 (Figures 1, 3, and 5A).

Claims 26 and 29 are drawn to a method of making a composition comprising combining a pharmaceutically acceptable excipient with at least one purified peptide having an amino acid sequence as set forth in SEQ ID NO:8.

Rockey et al teach the claimed method (Figure 3, section *Production of fusion proteins*, page 620 and page 624).

Claims 27, 28, 31, 34, 37, 40, 43, and 46 are drawn to a method of inducing an immune response in a subject/mammal comprising administering a composition comprising at least one purified peptide comprising  $\geq 10$  contiguous amino acids of an amino acid sequence as set forth in SEQ ID NO:8.

Rockey et al teach the claimed method (Figure 3, section *Production of fusion proteins*, page 620 and page 624).

**Claim Rejections - 35 USC § 103**

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8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 30, 32, 33, 35, 38, 41, 44, and 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Rockey et al (*Molecular Microbiology*, 15(4):617-626, 1995).

The claims are drawn to a method of inducing an immune response in a human comprising administering a composition comprising at least one purified peptide comprising  $\geq 10$  contiguous amino acids of an amino acid sequence as set forth in SEQ ID NO:8.

Rockey et al teach the claimed method of immunizing animals. (Figure 3, section *Production of fusion proteins*, page 620 and page 624). While Rockey et al do not teach the specific induction of an immune response in humans, they do discuss the types of infections caused by the bacteria, *Chlamydia* and speculate on vaccine production (Abstract; Introduction; Discussion). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to utilize the protein composition of Rockey et al for immunization of humans against *Chlamydia* infections based upon the successful induction of an immune response in animals.

### Conclusion


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10. No claims are allowed.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (703) 308-4244. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (703)308-3909. The facsimile telephone number for the Art Unit Group is (703)308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)308-0196.

  
RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER  
Art Unit 1645

April 3, 2003